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| 30078 7590 03/07/2007 MATTHEW D. RABDAU TEKTRONIX, INC. 14150 S.W. KARL BRAUN DRIVE P.O. BOX 500 (50-LAW) BEAVERTON, OR 97077-0001 | | | EXAMINER STARKS, WILBERT L | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/692,503

Applicant(s)

SCHOENFELD, CHRISTIAN

Examiner

Wilbert L. Starks, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 U.S.C. §101

1. 35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

the invention as disclosed in claims 1-3 and 8-15 is directed to non-statutory subject matter.

2. None of the claims is limited to practical applications. Specifically, the claims do not conform to the standard from *State Street Bank & Trust Co. v. Signature Financial Group Inc.*, 47 USPQ2d 1596 (Fed. Cir. 1998). In that case, the court found that:

*Today we hold that the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price, constitutes a practical application of a mathematical algorithm, formula, or calculation because it produces 'a useful, concrete and tangible result' -- a final share price momentarily fixed for recording purposes and even accepted and relied upon by regulatory authorities and in subsequent trades. (emphasis added) *State Street Bank* at 1601.*

3. The court was careful to specify that the "useful, concrete and tangible result" it found was "a final share price momentarily fixed for recording purposes and even accepted and relied upon by regulatory authorities and in subsequent trades." (i.e. the

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trading activity is the further practical use of the real world monetary data beyond the transformation in the computer – i.e., “post-processing activity”).

4. The result claimed by Applicant is the entering of parameters. Although Applicant mentions a "measurement task", Applicant does not actually measure anything in the claims. there's no real world data in the claims and the result does not reach the real world to have a "useful, concrete and tangible result."

5. Applicant cites no such specific results to define a useful, concrete and tangible result. Neither does Applicant specify the associated practical application with the kind of specificity the Federal Circuit used. On that basis, claims 1-3 and 8-15 are, thereby, rejected under 35 U.S.C. §101.

Claim Rejections - 35 U.S.C. §112

The following is a quotation of the first paragraph of 35 U.S.C. §112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-15 are rejected under 35 U.S.C. §112, first paragraph.

Claims 1-3 and 8-15

Claims 1-3 and 8-15 because current case law (and accordingly, the MPEP) require such a rejection if a §101 rejection is given because when Applicant has not in fact disclosed the practical application for the invention, as a matter of law there is no

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way Applicant could have disclosed *how* to practice the *undisclosed* practical application. This is how the MPEP puts it:

("The how to use prong of section 112 **incorporates as a matter of law** the requirement of 35 U.S.C. §101 that the specification disclose as a matter of fact a practical utility for the invention.... If the application fails as a matter of fact to satisfy 35 U.S.C. §101, then the application also fails as a matter of law to enable one of ordinary skill in the art to use the invention under 35 U.S.C. §112."; In re Kirk, 376 F.2d 936, 942, 153 USPQ 48, 53 (CCPA 1967) ("Necessarily, compliance with § 112 requires a description of how to use presently useful inventions, **otherwise an applicant would anomalously be required to teach how to use a useless invention.**") See, MPEP 2107.01(IV), quoting In re Kirk (emphasis added).

Therefore, claims 1-3 and 8-15 are rejected on this basis.

Claim Rejections - 35 USC §102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 8-15 are rejected under 35 U.S.C. §102(b) as being anticipated by Perholtz, et al (U.S. Patent Number 5,732,212 A; dated 24 MAR 1998; class 709; subclass 224). Specifically:

Claim 1

Claim 1's:

a) displaying a **problem field on a display device**, the problem field having a plurality of network elements for a telecommunication network;

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is anticipated by Perholtz, et al, col. 44, lines 47-61, where it recites:

If a connection is made to the selected Host Unit 705, the TVLINK.EXE program **pops up a menu on the screen** with two choices permitting the Remote user to either select a normal access mode or a view only access mode. In a normal access mode, the user has full keyboard and video access to the Host Unit. In a view only access mode, the user has only the capability to view the output of the Host PC's VDAC. Next, processing continues at block 742. If the Host PC is not turned ON or the Host Unit is not properly connected to the Host PC, the Host Unit will return an error that no Host Video signal is present, but the connection to the Host Unit will continue until terminated by the Remote User for the possible purpose of retrieving any VDAC screen history that may be present in the Host Unit.

Claim 1's:

b) **graphically activating** one of the network elements;

is anticipated by Perholtz, et al, col. 44, lines 47-61, where it recites:

If a connection is made to the selected Host Unit 705, the TVLINK.EXE program pops up a menu on the screen with two choices permitting the Remote user to either **select** a normal access mode or a view only access mode. In a normal access mode, the user has full keyboard and video access to the Host Unit. In a view only access mode, the user has only the capability to view the output of the Host PC's VDAC. Next, processing continues at block 742. If the Host PC is not turned ON or the Host Unit is not properly connected to the Host PC, the Host Unit will return an error that no Host Video signal is present, but the connection to the Host Unit will continue until terminated by the Remote User for the possible purpose of retrieving any VDAC screen history that may be present in the Host Unit.

Claim 1's:

c) displaying a plurality of measurement tasks on the display device which are possible with respect to the activated network element;

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is anticipated by Perholtz, et al, col. 44, lines 47-61, where it recites:

If a connection is made to the selected Host Unit 705, the TVLINK.EXE program pops up a menu on the screen with two choices permitting the Remote user to either select a normal access mode or a view only access mode. In a normal access mode, the user has full keyboard and video access to the Host Unit. In a view only access mode, the user has only the capability to view the output of the Host PC's VDAC. Next, processing continues at block 742. If the Host PC is not turned ON or the Host Unit is not properly connected to the Host PC, the Host Unit will return an error that no Host Video signal is present, but the connection to the Host Unit will continue until terminated by the Remote User for the possible purpose of retrieving any VDAC screen history that may be present in the Host Unit.

Claim 1's:

d) graphically selecting one of the measurement tasks; and

is anticipated by Perholtz, et al, col. 44, lines 47-61, where it recites:

If a connection is made to the selected Host Unit 705, the TVLINK.EXE program pops up a menu on the screen with two choices permitting the Remote user to either select a normal access mode or a view only access mode. In a normal access mode, the user has full keyboard and video access to the Host Unit. In a view only access mode, the user has only the capability to view the output of the Host PC's VDAC. Next, processing continues at block 742. If the Host PC is not turned ON or the Host Unit is not properly connected to the Host PC, the Host Unit will return an error that no Host Video signal is present, but the connection to the Host Unit will continue until terminated by the Remote User for the possible purpose of retrieving any VDAC screen history that may be present in the Host Unit.

Claim 1's:

e) entering parameters level by level in lower levels starting from a level of the activated network element, with the parameters not specified by the user being occupied by standard values.

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is anticipated by Perholtz, et al, col. 44, lines 47-61, where it recites:

If a connection is made to the selected Host Unit 705, the TVLINK.EXE program pops up a menu on the screen with two choices permitting the Remote user to either select a normal access mode or a view only access mode. In a normal access mode, the user has full keyboard and video access to the Host Unit. In a view only access mode, the user has only the capability to view the output of the Host PC's VDAC. Next, processing continues at block 742. If the Host PC is not turned ON or the Host Unit is not properly connected to the Host PC, the Host Unit will return an error that no Host Video signal is present, but the connection to the Host Unit will continue until terminated by the Remote User for the possible purpose of retrieving any VDAC screen history that may be present in the Host Unit.

Claim 2

Claim 2's:

2. The method according to claim 1 wherein the problem field is displayed as a visual network plan.

is anticipated by Perholtz, et al, col. 6, lines 26-67 and col. 7, lines 1-16, where it recites:

Software installed on the Remote PC permits (1) accessing a Host PC site in either a Modem Linkage or Direct Line Linkage mode, (2) initializing a modem attached to the Remote PC (including baud rate, and initialization strings) necessary for a Modem Linkage mode, (3) maintaining a list of Host Units that may be accessed from the Remote PC (including the dialing information needed to call the Host modem that is used to access each Host Unit (when in a Modem Linkage mode), the ID number for each Host Unit, and the password needed to access each Host Unit), (4) completing a Modem or Direct Line Linkage from the Remote PC to a designated Host Unit, (5) displaying status information relating to a active connection on the Remote PC's VDM

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screen, (6) scanning the Host PC's VDM screen display history transferred from the Host Unit and stored on a mass storage device on the Remote PC, (7) setting the specific procedure to be used by the active Host Unit to capture Host PC VDAC video raster output (i.e. text modes, graphic modes, etc. in either monochrome or color), (8) switching the Remote PC's keyboard and/or mouse from use as a normal Remote keyboard and/or mouse to use as the keyboard and/or mouse for the Host PC, (9) accessing a Host PC for purposes of viewing a Host PC's VDM activity without switching the Host PC's keyboard and/or mouse to the Remote PC's keyboard and/or mouse, (10) switching the keyboard and/or mouse back from use as Host PC keyboard/mouse to use as a Remote keyboard/mouse, (11) initiating and controlling the transfer of data files between the Host and Remote PC, (12) communicating with the Host Unit using either standard telephone lines and modern communication protocols, when in a Modem Linkage mode, or a direct dedicated line, when in a Direct Line Linkage mode, (13) switching the Remote PC's VDM screen from a normal (i.e. Remote) VDM screen mode to a Host screen mode where a Host PC's VDAC output data is captured (without Host PC CPU support) and transmitted by the Host Unit to the Remote PC and is displayed on the Remote PC's VDM screen in place of the normal Remote PC's VDM screen display, (14) switching the Remote PC's VDM screen back from a Host PC video display to use as a Remote PC video display, (15) notifying the Host Unit to temporarily cut AC power input to the Host PC thereby forcing the Host PC to re-start, which is commonly referred to in the trade as a "cold-boot," (16) switching between Host Units and the Host Unit's associated Host PC in cases where more than Host Unit is interconnected, (17) changing a Host Unit's permanent or temporary password used by Remote PC's to access the Host Unit so as to prevent the unauthorized access of a Remote user to a Host PC, (18) terminating a Modem Linkage or Direct Line Linkage to a Host, (19) initiating a connection to another site, as required, (20) storing procedures necessary to train a Host Unit to decode a particular Host PC's VDAC video raster output signal, so that such procedures can be reloaded by a Remote PC into the Host PC's memory to facilitate using one Host Unit to access more than one Host PC without the need to repeat on-site training, and (21) exiting Remote PC application processing when there is no longer a need to access Host PCs.

Claim 3

Claim 3's:

3. The method according to claim 1 wherein the problem field is displayed as a pop-up menu.

is anticipated by Perholtz, et al, col. 44, lines 47-61, where it recites:

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If a connection is made to the selected Host Unit 705, the TVLINK.EXE program **pops up a menu on the screen** with two choices permitting the Remote user to either select a normal access mode or a view only access mode. In a normal access mode, the user has full keyboard and video access to the Host Unit. In a view only access mode, the user has only the capability to view the output of the Host PC's VDAC. Next, processing continues at block 742. If the Host PC is not turned ON or the Host Unit is not properly connected to the Host PC, the Host Unit will return an error that no Host Video signal is present, but the connection to the Host Unit will continue until terminated by the Remote User for the possible purpose of retrieving any VDAC screen history that may be present in the Host Unit.

Claim 8

Claim 8's:

8. The method according to claim 1 further comprising the step of displaying the network elements, including the measurement task, the interfaces, and the protocols which are eligible for configuration of the measurement task, in a visually different way on the display device than network elements still purchasable or network elements which are not offered or network elements purchasable online.

is anticipated by Perholtz, et al, col. 6, lines 26-67 and col. 7, lines 1-16, where it

recites:

Software installed on the Remote PC permits (1) accessing a Host PC site in either a Modem Linkage or Direct Line Linkage mode, (2) initializing a modem attached to the Remote PC (including baud rate, and initialization strings) necessary for a Modem Linkage mode, (3) maintaining a list of Host Units that may be accessed from the Remote PC (including the dialing information needed to call the Host modem that is used to access each Host Unit (when in a Modem Linkage mode), the ID number for each Host Unit, and the password needed to access each Host Unit), (4) completing a Modem or Direct Line Linkage from the Remote PC to a designated Host Unit, (5) **displaying status information relating to a active connection on the Remote PC's VDM screen**, (6) scanning the Host PC's VDM screen display history transferred from the Host Unit and stored on a mass storage device on the Remote PC, (7) setting the specific procedure to be used by the active Host Unit to capture Host PC VDAC video raster output (i.e. text

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modes, graphic modes, etc. in either monochrome or color), (8) switching the Remote PC's keyboard and/or mouse from use as a normal Remote keyboard and/or mouse to use as the keyboard and/or mouse for the Host PC, (9) accessing a Host PC for purposes of viewing a Host PC's VDM activity without switching the Host PC's keyboard and/or mouse to the Remote PC's keyboard and/or mouse, (10) switching the keyboard and/or mouse back from use as Host PC keyboard/mouse to use as a Remote keyboard/mouse, (11) initiating and controlling the transfer of data files between the Host and Remote PC, (12) communicating with the Host Unit using either standard telephone lines and modem communication protocols, when in a Modem Linkage mode, or a direct dedicated line, when in a Direct Line Linkage mode, (13) switching the Remote PC's VDM screen from a normal (i.e. Remote) VDM screen mode to a Host screen mode where a Host PC's VDAC output data is captured (without Host PC CPU support) and transmitted by the Host Unit to the Remote PC and is displayed on the Remote PC's VDM screen in place of the normal Remote PC's VDM screen display, (14) switching the Remote PC's VDM screen back from a Host PC video display to use as a Remote PC video display, (15) notifying the Host Unit to temporarily cut AC power input to the Host PC thereby forcing the Host PC to re-start, which is commonly referred to in the trade as a "cold-boot," (16) switching between Host Units and the Host Unit's associated Host PC in cases where more than Host Unit is interconnected, (17) changing a Host Unit's permanent or temporary password used by Remote PC's to access the Host Unit so as to prevent the unauthorized access of a Remote user to a Host PC, (18) terminating a Modem Linkage or Direct Line Linkage to a Host, (19) initiating a connection to another site, as required, (20) storing procedures necessary to train a Host Unit to decode a particular Host PC's VDAC video raster output signal, so that such procedures can be reloaded by a Remote PC into the Host PC's memory to facilitate using one Host Unit to access more than one Host PC without the need to repeat on-site training, and (21) exiting Remote PC application processing when there is no longer a need to access Host PCs.

Claim 9

Claim 9's:

9. The method according to claim 1 further comprising the step of specifying in the configuring of the measurement task a protocol that contributes to solving the measurement task, with the configuring being made via graphical selection from the group consisting of a check box, a combobox and a pop-up menu.

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is anticipated by Perholtz, et al, col. 44, lines 47-61, where it recites:

If a connection is made to the selected Host Unit 705, the TVLINK.EXE program pops up a menu on the screen with two choices permitting the Remote user to either select a normal access mode or a view only access mode. In a normal access mode, the user has full keyboard and video access to the Host Unit. In a view only access mode, the user has only the capability to view the output of the Host PC's VDAC. Next, processing continues at block 742. If the Host PC is not turned ON or the Host Unit is not properly connected to the Host PC, the Host Unit will return an error that no Host Video signal is present, but the connection to the Host Unit will continue until terminated by the Remote User for the possible purpose of retrieving any VDAC screen history that may be present in the Host Unit.

Claim 10

Claim 10's:

10. The method according to claim 9 further comprising the step of selecting different versions of the selected protocol by graphical selection from the group consisting of the check box, the combobox and the pop-up menu.

is anticipated by Perholtz, et al, col. 44, lines 47-61, where it recites:

If a connection is made to the selected Host Unit 705, the TVLINK.EXE program pops up a menu on the screen with two choices permitting the Remote user to either select a normal access mode or a view only access mode. In a normal access mode, the user has full keyboard and video access to the Host Unit. In a view only access mode, the user has only the capability to view the output of the Host PC's VDAC. Next, processing continues at block 742. If the Host PC is not turned ON or the Host Unit is not properly connected to the Host PC, the Host Unit will return an error that no Host Video signal is present, but the connection to the Host Unit will continue until terminated by the Remote User for the possible purpose of retrieving any VDAC screen history that may be present in the Host Unit.

Claim 11

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Claim 11's:

11. The method according to claim 1 further comprising the step of executing configuration of the protocol tester hardware-wise according to the configured measurement task.

is anticipated by Perholtz, et al, col. 44, lines 16-46, where it recites:

TVLINK.EXE processing begins at block 700 on FIG. 7A. When the program is first invoked, a System Main Menu is displayed 701 with three processing options. The first menu option, Setup System 702, permits configuring the system to the user's specific requirements and the hardware configuration of the Remote PC where the system is being installed. The second menu option "Call Host Site" 703 permits the user to cause their Remote PC to call and link to a desired Host PC. When this menu option is selected, a call list of Host Units that may be selected is displayed 704. This call list is created and maintained as part of Setup System 702 processing. When a Host Unit on the list is selected, the program initiates linkage processing to the selected Host Site, then links to the requested Host Unit. Once linked a password is requested by the Host Unit using a password transmission key based random number that causes the password transmitted by the Host Unit to be encrypted following a procedure set by the key. This approach makes it difficult for someone to decode a password being transmitted from a Remote PC to a Host Unit by tapping into the communication line. If an invalid password is received by the Host Unit, a "session" lock out counter for the Host Unit is incremented by one. If this counter exceeds the limit set for the session (see block 734 processing below), the user is locked out from any further access attempts to the Host Unit for the current session and a Host Unit lock out counter stored in non-volatile RAM in the Host Unit is incremented by one. If the Host Unit lock out counter exceeds the limit for the Host Unit (see block 734 processing below), all access to the Host PC will be blocked until someone presses the Action button on the front of the Host Unit.

Claim 12

Claim 12's:

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12. The method according to claim 1 wherein the standard values are predetermined in the protocol tester.

is anticipated by Perholtz, et al, col. 44, lines 16-46, where it recites:

TVLINK.EXE processing begins at block 700 on FIG. 7A. When the program is first invoked, a System Main Menu is displayed 701 with three processing options. The first menu option, Setup System 702, permits configuring the system to the user's specific requirements and the hardware configuration of the Remote PC where the system is being installed. The second menu option "Call Host Site" 703 permits the user to cause their Remote PC to call and link to a desired Host PC. When this menu option is selected, a call list of Host Units that may be selected is displayed 704. This call list is created and maintained as part of Setup System 702 processing. When a Host Unit on the list is selected, the program initiates linkage processing to the selected Host Site, then links to the requested Host Unit. Once linked a password is requested by the Host Unit using a password transmission key based random number that causes the password transmitted by the Host Unit to be encrypted following a procedure set by the key. This approach makes it difficult for someone to decode a password being transmitted from a Remote PC to a Host Unit by tapping into the communication line. If an invalid password is received by the Host Unit, a "session" lock out counter for the Host Unit is incremented by one. If this counter exceeds the limit set for the session (see block 734 processing below), the user is locked out from any further access attempts to the Host Unit for the current session and a Host Unit lock out counter stored in non-volatile RAM in the Host Unit is incremented by one. If the Host Unit lock out counter exceeds the limit for the Host Unit (see block 734 processing below), all access to the Host PC will be blocked until someone presses the Action button on the front of the Host Unit.

Claim 13

Claim 13's:

13. The method according to claim 1 further comprising the step of during the selection of the measurement task offering previously configured measurement tasks on the display device for selection.

is anticipated by Perholtz, et al, col. 44, lines 16-46, where it recites:

TVLINK.EXE processing begins at block 700 on FIG. 7A. When the program is first invoked, a System Main Menu is displayed 701 with three processing options. The first menu option, Setup System 702, permits configuring the system to the user's specific requirements and the hardware configuration of the Remote PC where the system is being installed. The second menu option "Call Host Site" 703 permits the user to cause their Remote PC to call and link to a desired Host PC. When this menu option is selected, a call list of Host Units that may be selected is displayed 704. This call list is created and maintained as part of Setup System 702 processing. When a Host Unit on the list is selected, the program initiates linkage processing to the selected Host Site, then links to the requested Host Unit. Once linked a password is requested by the Host Unit using a password transmission key based random number that causes the password transmitted by the Host Unit to be encrypted following a procedure set by the key. This approach makes it difficult for someone to decode a password being transmitted from a Remote PC to a Host Unit by tapping into the communication line. If an invalid password is received by the Host Unit, a "session" lock out counter for the Host Unit is incremented by one. If this counter exceeds the limit set for the session (see block 734 processing below), the user is locked out from any further access attempts to the Host Unit for the current session and a Host Unit lock out counter stored in non-volatile RAM in the Host Unit is incremented by one. If the Host Unit lock out counter exceeds the limit for the Host Unit (see block 734 processing below), all access to the Host PC will be blocked until someone presses the Action button on the front of the Host Unit.

Claim 14

Claim 14's:

14. The method according to claims 1 or 13 further comprising the step of during the selection of the measurement task offering previously configured measurement tasks on the display device for modification.

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is anticipated by Perholtz, et al, col. 44, lines 16-46, where it recites:

TVLINK.EXE processing begins at block 700 on FIG. 7A. When the program is first invoked, a System Main Menu is displayed 701 with three processing options. The first menu option, Setup System 702, permits configuring the system to the user's specific requirements and the hardware configuration of the Remote PC where the system is being installed. The second menu option "Call Host Site" 703 permits the user to cause their Remote PC to call and link to a desired Host PC. When this menu option is selected, a call list of Host Units that may be selected is displayed 704. This call list is created and maintained as part of Setup System 702 processing. When a Host Unit on the list is selected, the program initiates linkage processing to the selected Host Site, then links to the requested Host Unit. Once linked a password is requested by the Host Unit using a password transmission key based random number that causes the password transmitted by the Host Unit to be encrypted following a procedure set by the key. This approach makes it difficult for someone to decode a password being transmitted from a Remote PC to a Host Unit by tapping into the communication line. If an invalid password is received by the Host Unit, a "session" lock out counter for the Host Unit is incremented by one. If this counter exceeds the limit set for the session (see block 734 processing below), the user is locked out from any further access attempts to the Host Unit for the current session and a Host Unit lock out counter stored in non-volatile RAM in the Host Unit is incremented by one. If the Host Unit lock out counter exceeds the limit for the Host Unit (see block 734 processing below), all access to the Host PC will be blocked until someone presses the Action button on the front of the Host Unit.

Claim 15

Claim 15's:

means for displaying a problem field, the problem field having a plurality of network elements for a telecommunication network;

is anticipated by Perholtz, et al, col. 44, lines 47-61, where it recites:

If a connection is made to the selected Host Unit 705, the TVLINK.EXE program pops up a menu on the screen with two choices permitting the Remote user to either select a normal access mode or a view only

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access mode. In a normal access mode, the user has full keyboard and video access to the Host Unit. In a view only access mode, the user has only the capability to view the output of the Host PC's VDAC. Next, processing continues at block 742. If the Host PC is not turned ON or the Host Unit is not properly connected to the Host PC, the Host Unit will return an error that no Host Video signal is present, but the connection to the Host Unit will continue until terminated by the Remote User for the possible purpose of retrieving any VDAC screen history that may be present in the Host Unit.

Claim 15's:

means for graphically activating one of the network elements;

is anticipated by Perholtz, et al, col. 44, lines 47-61, where it recites:

If a connection is made to the selected Host Unit 705, the TVLINK.EXE program pops up a menu on the screen with two choices permitting the Remote user to either select a normal access mode or a view only access mode. In a normal access mode, the user has full keyboard and video access to the Host Unit. In a view only access mode, the user has only the capability to view the output of the Host PC's VDAC. Next, processing continues at block 742. If the Host PC is not turned ON or the Host Unit is not properly connected to the Host PC, the Host Unit will return an error that no Host Video signal is present, but the connection to the Host Unit will continue until terminated by the Remote User for the possible purpose of retrieving any VDAC screen history that may be present in the Host Unit.

Claim 15's:

means for displaying a plurality of measurement tasks which are possible with respect to the activated network topology element;

is anticipated by Perholtz, et al, col. 44, lines 47-61, where it recites:

If a connection is made to the selected Host Unit 705, the TVLINK.EXE program pops up a menu on the screen with two choices permitting the Remote user to either select a normal access mode or a view only

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access mode. In a normal access mode, the user has full keyboard and video access to the Host Unit. In a view only access mode, the user has only the capability to view the output of the Host PC's VDAC. Next, processing continues at block 742. If the Host PC is not turned ON or the Host Unit is not properly connected to the Host PC, the Host Unit will return an error that no Host Video signal is present, but the connection to the Host Unit will continue until terminated by the Remote User for the possible purpose of retrieving any VDAC screen history that may be present in the Host Unit.

Claim 15's:

a storage device in which standard values for parameters are stored, which standard values may serve for the configuration of the measurement task; and

is anticipated by Perholtz, et al, col. 44, lines 16-46, where it recites:

TVLINK.EXE processing begins at block 700 on FIG. 7A. When the program is first invoked, a System Main Menu is displayed 701 with three processing options. The first menu option, Setup System 702, permits configuring the system to the user's specific requirements and the hardware configuration of the Remote PC where the system is being installed. The second menu option "Call Host Site" 703 permits the user to cause their Remote PC to call and link to a desired Host PC. When this menu option is selected, a call list of Host Units that may be selected is displayed 704. This call list is created and maintained as part of Setup System 702 processing. When a Host Unit on the list is selected, the program initiates linkage processing to the selected Host Site, then links to the requested Host Unit. Once linked a password is requested by the Host Unit using a password transmission key based random number that causes the password transmitted by the Host Unit to be encrypted following a procedure set by the key. This approach makes it difficult for someone to decode a password being transmitted from a Remote PC to a Host Unit by tapping into the communication line. If an invalid password is received by the Host Unit, a "session" lock out counter for the Host Unit is incremented by one. If this counter exceeds the limit set for the session (see block 734 processing below), the user is locked out from any further access attempts to the Host Unit for the current session and a Host Unit lock out counter stored in non-volatile RAM in the Host

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Unit is incremented by one. If the Host Unit lock out counter exceeds the limit for the Host Unit (see block 734 processing below), all access to the Host PC will be blocked until someone presses the Action button on the front of the Host Unit.

Claim 15's:

means for graphically selecting one of the measurement tasks; and

is anticipated by Perholtz, et al, col. 44, lines 47-61, where it recites:

If a connection is made to the selected Host Unit 705, the TVLINK.EXE program pops up a menu on the screen with two choices permitting the Remote user to either select a normal access mode or a view only access mode. In a normal access mode, the user has full keyboard and video access to the Host Unit. In a view only access mode, the user has only the capability to view the output of the Host PC's VDAC. Next, processing continues at block 742. If the Host PC is not turned ON or the Host Unit is not properly connected to the Host PC, the Host Unit will return an error that no Host Video signal is present, but the connection to the Host Unit will continue until terminated by the Remote User for the possible purpose of retrieving any VDAC screen history that may be present in the Host Unit.

Claim 15's:

means for entering further parameters level by level in lower levels starting from a level of the activated network element, with the parameters not specified by the user being occupied by standard values.

is anticipated by Perholtz, et al, col. 44, lines 16-46, where it recites:

TVLINK.EXE processing begins at block 700 on FIG. 7A. When the program is first invoked, a System Main Menu is displayed 701 with three processing options. The first menu option, Setup System 702, permits configuring the system to the user's specific requirements and the hardware configuration of the Remote PC where the system is being installed. The second menu option "Call Host Site" 703 permits the user to cause their Remote PC to call and link to a desired Host PC. When this menu option is selected, a call list of Host Units that may be selected is displayed 704. This call list is created and maintained as part of Setup System 702 processing. When a Host Unit on the list is selected, the program initiates linkage processing to the selected Host Site, then links to the requested Host Unit. Once linked a password is requested by the Host Unit using a password transmission key based random number that causes the password transmitted by the Host Unit to be encrypted following a procedure set by the key. This approach makes it difficult for someone to decode a password being transmitted from a Remote PC to a Host Unit by tapping into the communication line. If an invalid password is received by the Host Unit, a "session" lock out counter for the Host Unit is incremented by one. If this counter exceeds the limit set for the session (see block 734 processing below), the user is locked out from any further access attempts to the Host Unit for the current session and a Host Unit lock out counter stored in non-volatile RAM in the Host Unit is incremented by one. If the Host Unit lock out counter exceeds the limit for the Host Unit (see block 734 processing below), all access to the Host PC will be blocked until someone presses the Action button on the front of the Host Unit.

Response to Arguments

3. Applicant's arguments filed 12/07/2006 have been fully considered but they are not persuasive. Specifically, Applicant argues:

Argument 1

This amendment merely rephrases the preamble in order to more clearly express that the result of claim 1 is a protocol tester which is configured to perform a measurement task. This result is "useful, concrete, and tangible" for the following reasons:

The result of claim 1, i.e. a protocol tester which is configured to perform a measurement task, is "useful" because it facilitates "monitoring of an interface of a GPRS network." (page 1, lines 16-17) Facilitating the analysis of such a telecommunication network is "specific, substantial, and credible" utility. (MPEP § 2107)

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The result of claim 1, i.e. a protocol tester which is configured to perform a measurement task, is "concrete" because it is "reproducible" and "predictable." ("Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility", Official Gazette Notices, Nov. 22, 2005, <http://www.uspto.gov/web/offices/com/sol/og/2005/week47/patgupa.htm>, hereinafter "Interim Guidelines") That is, one of ordinary skill in the art of protocol analysis recognizes that a protocol tester configured according to the claimed steps is "reproducible" and "predictable."

The result of claim 1, i.e. a protocol tester which is configured to perform a measurement task, is "tangible" because a test and measurement instrument configured to perform a specific measurement is a "real-world result" with a "practical application" (Interim Guidelines), not a mere "abstract idea." In re Alappat, 33 F.3d 1526, 1543, 31 U.S.P.Q.2d 1545 (Fed.Cir. 1994).

For these reasons, the result of claim 1 is "useful, concrete, and tangible" and therefore claim 1 is directed to statutory subject matter. Applicants therefore request that the rejection of claim 1 under 35 U.S.C. §101 be withdrawn.

Claims 2, 3, and 8-14 are patentable because they depend from claim 1, which is patentable as discussed above. Accordingly, Applicants request that the rejection of claims 2, 3, and 8-14 under 35 U.S.C. §101 be withdrawn.

Applicants submit that claim 15 is patentable under 35 U.S.C. §101 itself, without consideration of the State Street Bank standard, because the subject matter of claim 15 is a new and useful machine. (Note that the preamble of claim 15 is in the usual form of "An apparatus comprising..." and the elements are components of the apparatus.) The State Street Bank standard is reserved for determining whether abstract ideas and mathematical algorithms (judicial exceptions to 35 U.S.C. §101) are useful. Therefore, Applicants request that the rejection of claim 15 under 35 U.S.C. §101 be withdrawn.

Applicant does not measure real world data. Applicant looks at the protocol of a signal. A signal format is not a real world thing that may be measured.

Examiner reads the claims as a whole to carefully search for actual limitations to practical applications and finds none. It is Examiner's opinion that the claims are devoid of statutory material. Having been given ample opportunity to respond by amendment, Applicant has presented no other statutory limitations to circumscribe the metes and bounds of the claims sufficiently to change this assessment.

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Accordingly, Applicant has failed to carry his burden of showing how the claims are in any way statutory. On this basis, Examiner finds Applicant's argument to be unpersuasive and the rejections STAND.

Argument 2

Rejected of Claims 1-15 under 35 U.S.C. §112 ¶ 1 The Examiner rejected claims 1-3 and 8-15 under 35 U.S.C. §112 ¶ 1 on the ground that such a rejection is required due to the abovementioned rejection under 35 U.S.C. §101; rejected 6 of 8 claims 4-7 under 35 U.S.C. §112 ¶ 1 on the ground that claim 4 depends from claims 1-3 in the conjunctive. With regard to claims 1-3 and 8-15, the rejection under 35 U.S.C. §112 ¶ 1 is no longer required because the rejection under 35 U.S.C. §101 has been overcome, as discussed above. Applicants therefore request that the rejection of claims 1-3 and 8-15 under 35 U.S.C. §112 ¶ 1 be withdrawn.

With regard to independent claim 4, Applicants amend claim 4 as follows: "The method according to one of claims 1-3..." Claim 4 as so amended overcomes the ground of rejection because it depends from claims 1-3 in the alternative, and is an acceptable multiple dependent form according to MPEP §608.01 (n)(I)(A). Accordingly, Applicants request that the rejection of claim 4 under 35 U.S.C. §112 ¶ 1 be withdrawn.

Claims 5-7 are patentable because they depend from claim 4, which is patentable as discussed above. Accordingly, Applicants request that the rejection of claims 5-7 under 35 U.S.C. §112 ¶ 1 be withdrawn.

Applicant has not overcome the grounds of rejection used for the 112 rejection. Accordingly, Applicant has failed to carry his burden of showing how the claims are in any way statutory. On this basis, Examiner finds Applicant's argument to be unpersuasive and the rejections STAND.

Argument 3

Rejection of Claims 1-3 and 8-15 under 35 U.S.C. §102(b)

The Examiner rejected claims 1-3 and 8-15 under 35 U.S.C. §102(b) as being anticipated by Perholtz et al. (U.S. Patent No. 5,732,212 A) (hereinafter "Perholtz"). Applicants respectfully traverse on

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the ground that Perholtz does not teach or suggest every element required by claims 1- 3 and 8-15.

With regard to independent claim 1, Applicants amend claim 1 as follows: "a) displaying a problem field on a display device of the protocol tester..." This amendment merely brings the language "protocol tester" from the preamble into the elements of the claim in order to clarify the scope of the claimed subject matter. No new matter has been added through this amendment.

Perholtz does not teach or suggest a "protocol tester" as required by claim 1 as so amended, and thus claim 1 is not anticipated by Perholtz. Therefore, Applicants request that the rejection of claim 1 under 35 U.S.C. §102(b) be withdrawn.

Claims 2-14 are patentable because they depend from claim 1, which is patentable as discussed above. Accordingly, Applicants request that the rejection of claims 2-14 under 35 U.S.C. §102(b) be withdrawn.

Perholtz et al., col. 39, lin. 26-39 anticipate the protocol tester where it recites:

When a key is pressed, the keyboard sends a byte or bytes to the Host CPU. It first asserts a serial "start" bit 670B, asserts a clock pulse 671B, then asserts the first data bit 670C, and so on, until the 8th data bit 670E and parity 670F has been clocked. Then, a stop bit 670G is asserted with clock pulse 671D. This ends the byte transfer. At this time, when the clock pulse is brought high 671E, the Host PC asserts a low on the clock line. This will remain low 671F until the Host PC has finished processing this data byte, at which time, the clock line will go high 671G and the keyboard can send another byte. For keystrokes such as, for example "A" through "Z", 670A and 671A show the protocol involved, data flow is from the keyboard to the Host PC.

Argument 4

With regard to independent claim 15, Applicants amend claim 15 as follows: "means for displaying a plurality of measurement tasks of the protocol tester ..." This amendment merely brings the language "protocol tester" from the preamble into the elements of the claim in order to clarify the scope of the claimed subject matter. No new matter has been added through this amendment.

Perholtz does not teach or suggest a "protocol tester" as required by claim 15 as so amended, and thus claim 15 is not anticipated by Perholtz. Therefore, Applicants request that the rejection of claim 15 under 35 U.S.C. §102(b) be withdrawn.

Perholtz et al., col. 39, lin. 26-39 anticipate the protocol tester where it recites:

When a key is pressed, the keyboard sends a byte or bytes to the Host CPU. It first asserts a serial "start" bit 670B, asserts a clock pulse 671B, then asserts the first data bit 670C, and so on, until the 8th data bit 670E and parity 670F has been clocked. Then, a stop bit 670G is asserted with clock pulse 671D. This ends the byte transfer. At this time, when the clock pulse is brought high 671E, the Host PC asserts a low on the clock line. This will remain low 671F until the Host PC has finished processing this data byte, at which time, the clock line will go high 671G and the keyboard can send another byte. For keystrokes such as, for example "A" through "Z", 670A and 671A show the protocol involved, data flow is from the keyboard to the Host PC.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Wilbert L. Starks, Jr. whose telephone number is (571) 272-3691.

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Alternatively, inquiries may be directed to the following:

S. P. E. David Vincent (571) 272-3080

Official (FAX) (571) 273-8300

A handwritten signature in black ink, appearing to read "Wilbert L. Starks, Jr.", written in a cursive style.

Wilbert L. Starks, Jr.
Primary Examiner
Art Unit 2129

WLS

05 MAR 2007